

---

**SUBSTITUTE HOUSE BILL 2664**

---

**State of Washington                      60th Legislature                      2008 Regular Session**

**By** House Health Care & Wellness (originally sponsored by Representatives Pedersen, Cody, Green, Morrell, Seaquist, Conway, Hasegawa, Hudgins, Upthegrove, Chase, Lias, Nelson, Loomis, McIntire, Barlow, Schual-Berke, and VanDeWege)

READ FIRST TIME 01/30/08.

1            AN ACT Relating to prohibiting the sale and use of  
2 prescriber-identifiable prescription data for marketing or promotional  
3 purposes; amending RCW 42.56.350; adding a new chapter to Title 19 RCW;  
4 creating a new section; and prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            NEW SECTION.    **Sec. 1.** (1) The legislature finds that:

7            (a) The state of Washington has clear and long-standing interests  
8 in maximizing the health and well-being of its residents, maintaining  
9 practice standards in the licensed professions, safeguarding the  
10 confidentiality and integrity of the doctor-patient relationship,  
11 combating undue influence of marketing on health care choices, and  
12 containing health care costs;

13            (b) To further its substantial interest in the health and  
14 well-being of its residents and in containing health care costs, the  
15 state of Washington has shown a strong commitment to evidence-based  
16 care and cost-effective health purchasing. Washington state has been  
17 most active in this regard with respect to prescription drug purchasing  
18 focused on clinical and cost-effectiveness, including the Washington  
19 evidence-based prescription drug program and the state preferred drug

1 list under RCW 70.14.050, the prescription drug purchasing consortium  
2 under RCW 70.14.060, and both generic and therapeutic drug substitution  
3 under chapter 69.41 RCW. In addition, the medicaid program is engaged  
4 in numerous efforts to improve the quality of, and reduce variability  
5 in, prescribing of pain management and mental health medications. The  
6 state also aggressively seeks supplemental rebates to lower drug costs  
7 in the medicaid program. The Washington state health technology  
8 assessment program, established under chapter 70.14 RCW, is applying  
9 the principles of evidence-based care and cost-effective purchasing to  
10 the review of medical devices and procedures for state purchased health  
11 care programs. Finally, the state is an active participant in the  
12 Puget Sound health alliance, whose goal is to improve the quality and  
13 transparency of health services provided across the public and private  
14 sectors;

15 (c) Prescriber-identifiable prescription data shows details of  
16 prescribers' drug use patterns. Using this data, pharmaceutical  
17 manufacturers can track the responses of prescribers to their marketing  
18 campaigns and use that information to tailor positive and negative  
19 reinforcements, including gifts, invitations to special events, paid  
20 speaking and consulting opportunities, prestigious board appointments,  
21 messages of appreciation or disappointment, and specially tailored  
22 marketing messages, that are intended to, and do in fact, exert an  
23 undue influence over prescribing practices;

24 (d) Numerous studies have shown that direct-to-physician marketing  
25 of prescription drugs raises prescribing costs and leads to more rapid  
26 prescribing of new drugs and decreased use of older or generic  
27 medications that may be more effective according to the best available  
28 medical evidence. These negative effects of direct-to-prescriber  
29 marketing are aggravated by marketer access to prescriber-identifiable  
30 prescription data;

31 (e) Health care providers in Washington who write prescriptions for  
32 their patients have a strong interest in the integrity of the patient-  
33 provider relationship and a reasonable expectation that the information  
34 in their prescriptions, including their own identity, will not be used  
35 for purposes other than the filling and processing of the payment for  
36 that prescription. The Washington chapter of the academy of family  
37 practice, the Washington chapter of the academy of pediatrics, and the

1 Washington state medical association support a prohibition on the sale  
2 or use of individual prescriber prescription data for marketing or  
3 promotional purposes;

4 (f) The removal of the names and addresses of patients from  
5 prescription drug data purchased by pharmaceutical manufacturers does  
6 not completely protect the privacy of patients. Tracking treatment  
7 history and prescriber identity can allow reidentification of patients.  
8 Even with patient identities removed, specific patients and shifts in  
9 their prescription drug use can be tracked by assigning individual  
10 identification numbers to patients, thus enabling marketing directed at  
11 convincing a prescriber to change a particular patient's treatment  
12 without the patient's knowledge or consent;

13 (g) The physician data restriction program offered by the American  
14 medical association is not an adequate remedy for Washington  
15 physicians, because (i) many physicians do not know about the program;  
16 (ii) many physicians do not receive the end-of-period notification for  
17 renewing or canceling their participation; (iii) under the program,  
18 physician-specific prescribing data can still be sold to data mining  
19 companies even though it is not supposed to be provided to sales  
20 representatives; (iv) the American medical association could choose to  
21 end the program at any time; and (v) the American medical association  
22 has a conflict of interest in operating the program because it earns  
23 over forty million dollars per year by selling physician identifying  
24 information to companies that match the identifying information to  
25 prescription drug claims;

26 (h) It is estimated that the pharmaceutical industry spends between  
27 thirty billion dollars and fifty-four billion dollars annually on  
28 marketing pharmaceuticals in the United States. Marketing programs are  
29 designed to increase sales, income, and profit. Between eighty and  
30 ninety percent of pharmaceutical marketing budgets are directed at  
31 physicians and other prescribers. Progress toward these goals can come  
32 at the expense of evidence-based care, efforts to contain health care  
33 costs, and sometimes the health of individual patients;

34 (i) Newer drugs on the market do not necessarily provide additional  
35 benefits over older drugs but do add costs and as yet unknown side  
36 effects. Marketing that results in prescribers using the newest drugs  
37 results in prescribing drugs that are more likely to be subject to

1 federal food and drug administration "black box" warnings or withdrawal  
2 from the market for safety reasons; and

3 (j) The sale of prescriber-identifiable prescription data runs  
4 counter to Washington's strong commitment to both evidence-based care  
5 and cost-effective health purchasing. Pharmaceutical marketers,  
6 through their surveillance of prescription records that include  
7 prescriber-identifiable data, are able to monitor and reward  
8 prescribing practices that favor the financial interests of  
9 pharmaceutical manufacturers over the interests of patients in  
10 clinically effective and cost-effective care. This act is necessary to  
11 realize the goals of the programs and activities undertaken by the  
12 state of Washington to implement evidence-based care and cost-effective  
13 health purchasing and to preserve the integrity of the patient-  
14 prescriber relationship.

15 (2) It is the intent of the legislature to improve the quality of  
16 health care received by Washingtonians, further health care cost  
17 containment, promote professional standards in the licensed  
18 professions, protect the confidentiality of prescribing information,  
19 safeguard the integrity of the doctor-patient relationship, and  
20 restrain undue influence over prescribing decisions by prohibiting  
21 conduct involving the sale, disclosure, and use of individual  
22 prescriber prescription data for marketing or promotional purposes.

23 NEW SECTION. **Sec. 2.** The definitions in this section apply  
24 throughout this chapter unless the context clearly requires otherwise.

25 (1) "Health care provider" has the same meaning as in RCW  
26 48.43.005(16).

27 (2) "Health carrier" has the same meaning as in RCW 48.43.005(18).

28 (3) "Marketing" or "market" includes advertising, promotion, or any  
29 activity that is intended to be used or is used to influence sales or  
30 the market share of a prescription drug, influence the prescribing  
31 behavior of an individual health care provider to promote a  
32 prescription drug, market prescription drugs to patients, or evaluate  
33 the effectiveness of a professional pharmaceutical detailing sales  
34 force.

35 (4) "Person" includes a natural person, corporation, limited  
36 liability company, trust, unincorporated association, partnership, and  
37 any other type of entity.

1 (5) "Pharmacy" means any individual or entity licensed under  
2 chapter 18.64 RCW.

3 (6) "Prescriber" means a health care provider authorized by law to  
4 prescribe and administer prescription drugs in the course of  
5 professional practice.

6 (7) "Promotion" or "promote" means any activity or product the  
7 intention of which is to advertise or publicize a prescription drug,  
8 including a brochure, media advertisement or announcement, poster, free  
9 sample, detailing visit, or personal appearance.

10 (8) "Regulated records" means information or documentation from a  
11 prescription written by a prescriber doing business in Washington or a  
12 prescription dispensed in Washington.

13 NEW SECTION. **Sec. 3.** (1) No person shall knowingly sell,  
14 disclose, or use regulated records that include prescriber-identifiable  
15 data to market or promote a prescription drug.

16 (2) This section does not restrict the sale, disclosure, or use of  
17 regulated records that include prescriber-identifiable data for the  
18 purposes of:

19 (a) Activities related to filling a valid prescription, including  
20 the dispensing of prescription medications to a patient or to the  
21 patient's authorized representative; the transmission of prescription  
22 information between an authorized prescriber and a pharmacy; the  
23 transfer of prescription information between pharmacies; the transfer  
24 of prescription records that may occur if pharmacy ownership is changed  
25 or transferred; and pharmacy reimbursement;

26 (b) Formulary compliance;

27 (c) Care management related to the diagnosis, treatment, or  
28 management of illness for a specific patient, including care management  
29 educational communications provided to a patient about the patient's  
30 health condition, adherence to a prescribed course of therapy, or other  
31 information about the drug being dispensed, treatment options, or  
32 clinical trials;

33 (d) Utilization review by a health care provider, the patient's  
34 health carrier, or an agent of the provider or carrier;

35 (e) Health care research and statistical reports resulting from  
36 such research, including, but not limited to, postmarketing

1 surveillance research, drug interaction research, drug safety studies,  
2 and population-based public health research;

3 (f) Collection and analysis of prescription drug utilization data  
4 for health care quality improvement purposes, including development of  
5 evidence-based treatment guidelines or health care performance  
6 effectiveness and efficiency measures, promoting compliance with  
7 evidence-based treatment guidelines or health care performance  
8 measures, and providing prescribers with information that details their  
9 practices relative to their peers to encourage prescribing consistent  
10 with evidence-based practice;

11 (g) Collection and dissemination of drug utilization data to  
12 promote transparency in evaluating performance related to the health  
13 care quality improvement measures included in (f) of this subsection;

14 (h) The transfer of prescription drug utilization data to and  
15 through secure electronic health record or personal health record  
16 systems;

17 (i) Alerting prescribers about a prescription drug recall, change  
18 in labeling information, or any purpose authorized by the federal food  
19 and drug administration or other federal or state government regulatory  
20 authority;

21 (j) The collection and transmission of prescription information to  
22 a Washington or federal law enforcement officer engaged in his or her  
23 official duties as otherwise provided by law;

24 (k) The collection and transmission of prescription information to  
25 any government agency or government agency-sponsored program to carry  
26 out its duties, or to any private person acting on behalf of a federal,  
27 state, or local agency to carry out its duties;

28 (l) The collection and transmission of prescription drug  
29 information in connection with any civil, criminal, administrative, or  
30 other proceeding before any federal, state, or local court or  
31 administrative agency or before any self-regulatory body, including the  
32 service of process, investigation in anticipation of litigation, and  
33 the execution or enforcement of judgments and orders, or pursuant to an  
34 order of a federal or state court; or

35 (m) As otherwise expressly provided by law.

36 (3) This section does not prohibit the sale, disclosure, or use of  
37 regulated records for marketing or promotion, organized by medical

1 specialty or otherwise, if the data does not identify a prescriber, and  
2 there is no reasonable basis to believe that the data provided could be  
3 used to identify a prescriber or a patient.

4 (4) Any person that has received regulated records that include  
5 prescriber-identifiable data under subsection (2) or (3) of this  
6 section may reuse, resell, or redisclose that information only for  
7 purposes authorized under those subsections. If the information is  
8 reused, resold, or redisclosed, the person or entity must maintain  
9 records identifying each person or entity that has received information  
10 and the permitted purpose for which the information has been used. The  
11 records must be maintained for a period of five years following the  
12 date or reuse, resale, or redisclosure, and must be made available to  
13 any person upon request.

14 NEW SECTION. **Sec. 4.** Any person who knowingly fails to comply  
15 with the requirements of this chapter or rules adopted pursuant to this  
16 chapter by selling, using, or disclosing regulated data in a manner not  
17 authorized by this chapter or its rules shall be subject to an  
18 administrative penalty of not more than fifty thousand dollars per  
19 violation, as assessed by the secretary of the department of health.  
20 The office of the attorney general shall take necessary action to  
21 enforce payment of penalties assessed under this section.

22 NEW SECTION. **Sec. 5.** In addition to any other remedy provided by  
23 law, the legislature finds that the practices covered by this chapter  
24 are matters vitally affecting the public interest for the purpose of  
25 applying the consumer protection act, chapter 19.86 RCW. A violation  
26 of this chapter is not reasonable in relation to the development and  
27 preservation of business and is an unfair or deceptive act in trade or  
28 commerce and an unfair method of competition for the purpose of  
29 applying the consumer protection act, chapter 19.86 RCW.

30 **Sec. 6.** RCW 42.56.350 and 2005 c 274 s 415 are each amended to  
31 read as follows:

32 (1) The federal Social Security number of individuals governed  
33 under chapter 18.130 RCW maintained in the files of the department of  
34 health is exempt from disclosure under this chapter. The exemption in  
35 this section does not apply to requests made directly to the department

1 from federal, state, and local agencies of government, and national and  
2 state licensing, credentialing, investigatory, disciplinary, and  
3 examination organizations.

4 (2) The current residential address and current residential  
5 telephone number of a health care provider governed under chapter  
6 18.130 RCW maintained in the files of the department are exempt from  
7 disclosure under this chapter, if the provider requests that this  
8 information be withheld from public inspection and copying, and  
9 provides to the department of health an accurate alternate or business  
10 address and business telephone number. The current residential address  
11 and residential telephone number of a health care provider governed  
12 under RCW 18.130.040 maintained in the files of the department of  
13 health shall automatically be withheld from public inspection and  
14 copying unless the provider specifically requests the information be  
15 released, and except as provided for under RCW 42.56.070(9).

16 (3) Records held by an agency administering a state purchased  
17 health care program, as defined in RCW 41.05.011(2), that include  
18 prescription information containing prescriber-identifiable data that  
19 could be used to identify a prescriber, are exempt from disclosure  
20 under this chapter, except that the records shall be made available  
21 upon request for the purposes expressed in section 3(2) of this act.

22 NEW SECTION. Sec. 7. Sections 1 through 5 of this act constitute  
23 a new chapter in Title 19 RCW.

24 NEW SECTION. Sec. 8. This act may be known and cited as the  
25 prescription privacy and integrity act of 2008.

--- END ---